

## ALCOHOLIC BEVERAGES DIVISION[185]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 16, "Trade Practices," Iowa Administrative Code.

The amendments rescind rule 185—16.7(123) and adopt three new rules on tasting, sampling, and trade spending. The amendments define terms and explain each subject matter in greater detail to provide clarity to the reader.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 19, 2015, as **ARC 2106C**. A meeting to hear requested oral presentation, scheduled for September 8, 2015, was canceled without notice because no request was made.

The Division received written comments from four interested parties. Upon careful review of the comments received, the Division made changes to the proposed amendments as published under Notice of Intended Action to be more reflective of the modern marketplace and to further clarify intent for the reader. Specifically, changes have been made to the following: Subparagraphs 16.7(1)"a"(1) to (4) have been changed to increase the number of servings of liquor, wine, beer or high alcoholic beer, and mixed drink or cocktail that may be offered per person during a tasting event; new paragraph 16.7(1)"d" has been added to clarify that product served by an industry member in a tasting event shall be limited to the brands the industry member represents; paragraph 16.7(3)"a" has been rewritten to address the manner in which an industry member may participate in a tasting event that is conducted by a retailer by incorporating the substance of paragraph 16.7(3)"g," which has been eliminated in its entirety; paragraph 16.7(3)"d" has been rewritten to clarify how product used during a tasting conducted by a retailer is to be obtained by the retailer; and subrule 16.8(4) has been changed to clarify how a container of product used for sampling shall be identified.

Changes suggested in three of the written comments received by the Division were not incorporated into the adopted amendments because the suggested changes would create a conflict with current law, would introduce new subject matter, or were deemed unnecessary. Specifically, a request to amend subparagraphs 16.7(2)"b"(1) and (3) to allow the tasting of alcoholic liquor in an unlicensed public place was not granted because of the prohibition in Iowa Code section 123.46, subsection 2; a request to amend paragraphs 16.7(2)"a" and "b" to allow the use of consumer souvenirs and advertising in conjunction with a tasting event was not granted because the subject matter is unrelated to new rule 185—16.7(123) and should be addressed in a separate rule making; and a request to modify subrule 16.8(1) was deemed unnecessary because the subrule is sufficient to address the concerns of the interested party and to accommodate the needs of the modern marketplace.

These amendments do not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

The Alcoholic Beverages Commission adopted these amendments on October 20, 2015.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 123.

These amendments will become effective on December 30, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **185—16.1(123)**:

*"Brand"* means each alcoholic liquor, wine, beer, or high alcoholic content beer packaged and sold under a separate name, class, type, or kind designation (wine appellation of origin, wine vintage date, alcoholic liquor age, percentage of alcohol, etc.).

*"Product"* means alcoholic liquor, wine, beer, or high alcoholic content beer as defined in Iowa Code chapter 123.

*"Sampling"* means the practice of industry members giving product to a retailer for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Tasting*” means the presentation and serving of a product by industry members or retailers to consumers for the purpose of market research, education, promotion of the product, or determination of the flavor of the product.

“*Trade spending*” means the practice of industry members promoting their brand by purchasing alcoholic beverages for consumers where alcoholic beverages are sold and served for on-premises consumption.

ITEM 2. Rescind rule 185—16.7(123) as follows:

~~**185—16.7(123) Tastings, samplings and trade spending.** An industry member may conduct tastings in a retail establishment, provided that the tasting has the indicia of a tasting and is not a subterfuge to provide a retailer with free merchandise. An industry member may provide samples of alcoholic liquor, wine or beer to a retailer who has not previously purchased the brand from the industry member provided that the quantities of any brand of beer do not exceed 3 gallons; of wine, 3 liters; of alcoholic liquor, 500 milliliters. An industry member may engage in the practice of trade spending (purchasing one round of alcoholic or nonalcoholic beverages for patrons of an on-premises retail establishment). An industry member who engages in trade spending is prohibited from paying the retailer more than the ordinary and customary charge for the beverages.~~

~~This rule is intended to implement Iowa Code section 123.186.~~

ITEM 3. Adopt the following new rules 185—16.7(123), 185—16.8(123) and 185—16.9(123):

**185—16.7(123) Tasting.**

**16.7(1) Restrictions.**

a. The amount of product served per person during a tasting shall be limited to the following.

- (1) No more than two one-half of one-fluid-ounce tastes of any brand of alcoholic liquor.
- (2) No more than two one-fluid-ounce tastes of any brand of wine.
- (3) No more than two two-fluid-ounce tastes of any brand of beer or high alcoholic content beer.
- (4) No more than two two-fluid-ounce tastes of a mixed drink or cocktail as defined in

185—paragraph 4.5(1) “b.”

b. Product shall not be served to, or allowed to be consumed by, any consumer who is under legal age, intoxicated, or simulating intoxication.

c. Product served during a tasting shall not be served by persons under 18 years of age.

d. Product served by an industry member shall be limited to the brands the industry member represents.

**16.7(2) Tastings conducted by an industry member.** An industry member may conduct a tasting on licensed and unlicensed premises, subject to the requirements and restrictions provided in this rule.

*a. Licensed premises.*

(1) A tasting may be conducted on licensed premises where alcoholic beverages are sold or served.

(2) A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

(3) A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

(4) An industry member may provide snack foods or hors d’oeuvres for the participants at the tasting.

(5) Product or food served during a tasting shall either be provided by the industry member or purchased at no more than the ordinary retail price from the license or permit holder on whose premises the tasting is being held.

(6) Any product or food remaining at the end of a tasting shall be removed from the licensed premises by the industry member.

*b. Unlicensed premises.*

(1) A tasting of wine, beer, or high alcoholic content beer may be conducted in an unlicensed public place unless prohibited by Iowa Code section 123.46(2) or an applicable ordinance or regulation of the local authority.

(2) A tasting of alcoholic liquor, wine, beer, or high alcoholic content beer may be conducted in an unlicensed private place as defined in 185—subrule 4.23(4).

(3) A tasting of alcoholic liquor is prohibited in an unlicensed public place.

(4) Wine, beer, and high alcoholic content beer served during a tasting shall be obtained from the respective wholesaler.

(5) An industry member may provide snack foods or hors d'oeuvres for the participants at the tasting.

(6) Any product or food remaining at the end of a tasting shall be removed from the premises by the industry member.

**16.7(3) *Tastings conducted by a retailer.*** A retailer licensed or permitted for on- or off-premises consumption may conduct a tasting, subject to the requirements and restrictions provided in this rule.

*a.* Product served during a tasting shall be served by a retailer, the retailer's employees or agents, or an industry member who has the explicit consent of the retailer.

*b.* A tasting shall be limited to the types of alcoholic beverages available for purchase as authorized by the license or permit.

*c.* A tasting shall be held during the hours in which alcoholic beverages may be legally sold or served.

*d.* Product served during a tasting shall be legally obtained by the retailer as prescribed by Iowa Code chapter 123.

*e.* An off-premises license or permit holder may conduct a tasting when there is no charge for product or access.

*f.* Food may be provided by the retailer for the participants of a tasting.

**16.7(4) *Record keeping.*** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

### **185—16.8(123) Sampling.**

**16.8(1) *Conditions.*** An industry member may give product to a retailer who has not purchased the brand from that industry member within the preceding 12 months.

**16.8(2) *Quantity.*** Product given to a retailer shall not exceed the following amounts within a calendar year.

*a.* Three liters of any brand of alcoholic liquor.

*b.* Three liters of any brand of wine.

*c.* Three gallons of any brand of beer or high alcoholic content beer.

**16.8(3) *Procurement.*** An industry member shall obtain alcoholic liquor, wine, beer, or high alcoholic content beer used for sampling from the respective wholesaler.

**16.8(4) *Identification.*** Each container of product used for sampling shall be clearly marked with the word "SAMPLE". The marking shall not obscure the label of the container.

**16.8(5) *Record keeping.*** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

**185—16.9(123) Trade spending.** An industry member may engage in the practice of trade spending.

**16.9(1) *Advertising.*** Trade spending shall be unannounced and unpublicized.

**16.9(2) *Quantity.*** The industry member shall be limited to purchasing one round of alcoholic beverages or nonalcoholic beverages for patrons of an on-premises retailer.

**16.9(3) *Payment.*** The industry member shall pay the retailer no more than the ordinary retail price for the alcoholic beverage or nonalcoholic beverage.

**16.9(4) *Record keeping.*** An industry member shall keep and maintain records in accordance with rule 185—16.18(123).

This rule is intended to implement Iowa Code section 123.186.

[Filed 11/3/15, effective 12/30/15]

[Published 11/25/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/25/15.